

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
vs.	:	
Union Electric Company	:	
	:	03-0167
Reconciliation of revenues	:	
collected under Coal Tar riders	:	
with prudent costs associated with	:	
coal tar clean up expenditures.	:	

ORDER

By the Commission:

I. INTRODUCTION

On March 12, 2003, the Illinois Commerce Commission ("Commission") entered an order initiating this reconciliation proceeding. The order directed Union Electric Company d/b/a AmerenUE ("UE") to present evidence depicting the reconciliation of revenues collected under UE's Rider R, Electric Environmental Adjustment Clause, and Rider E, Gas Environmental Adjustment Clause, (collectively "the Coal Tar Riders") with prudent costs associated with coal tar clean-up expenditures for the calendar year ending December 31, 2002.

Pursuant to due notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on June 17, 2003 and January 15, 2004. Commission Staff ("Staff") and counsel for UE entered appearances at each hearing. In compliance with the Commission's initiating order and 83 Ill. Adm. Code 255, "Notice Requirements for Change in Rates for Cooling, Electric, Gas, Heating, Telecommunications, Sewer or Water Services," UE filed with the Commission a list of all Illinois municipalities within which it provides electric or gas service. Municipalities included in the list received notice of the first hearing in this matter. UE also published notice of its initial filings in this matter in newspapers having general circulation in its service territory. No petitions to intervene were received. Leonard Mans, a Supervisor in the General Accounting Department of the Controller's Function at Ameren Services Company, and Donald Richardson, a Consulting Environmental Engineer in the Waste Management Section of the Environmental Safety and Health Department of Ameren Services Company, testified on behalf of UE. Leslie Pugh, an Accountant in the Accounting Department of the Commission's Financial Analysis Division testified for Staff. At the conclusion of the latter hearing, the record was marked "Heard and Taken." There are no contested issues in this docket.

II. BACKGROUND

In consolidated Docket Nos. 91-0080 through 91-0095, the Commission initiated a proceeding to consider issues related to the ratemaking treatment of costs that have been or will be incurred by Illinois gas and electric utilities in connection with environmental remediation arising from the operation and decommissioning of manufactured gas plants ("MGPs"). All gas and electric utilities were named as parties in the initiating order. On September 30, 1992, the Commission entered a final Order in the consolidated proceeding. The Commission found that there should be a presumption that MGPs were properly operated and retired; that utilities could recover the prudently incurred costs of environmental remediation arising from the operation and decommissioning of MGPs; that the preferable, but not exclusive means of recovery was through a rider with a prudence review; and that a sharing of clean-up costs between ratepayers and shareholders should be achieved by requiring that costs be amortized over five years with no recovery of carrying costs on the unrecovered balance.

Regarding the preference for use of a rider, the Commission stated in part that given the wide variations in and the difficulties in making forecasts of the scope, costs, and timing of coal tar investigation and remediation activities, riders can generally be expected to provide a more accurate and efficient means of tracking costs and matching such costs with recoveries than would be achieved by base rate recovery methods. In its Order of September 30, 1992, the Commission found that rider mechanisms shall be subject to an annual reconciliation with a prudence review. The Commission explained that a rider which lacks a prudence review does not provide a sufficient means of ensuring that the utility's clean-up activities and costs were necessary or cost effective. The Commission further stated that in order to properly assess the necessity for and reasonableness of a utility's remediation costs and activities, the standards to be applied in the review thereof shall include those guidelines identified on pages 78-79 of the Order, as well as the other guidelines found appropriate in the Order. The four guidelines on pages 78-79 are:

- (1) reasonable and appropriate business standards;
- (2) the requirements of other relevant state and/or federal authorities;
- (3) minimization of costs to ratepayers, consistent with safety, reliability, and quality assurance; and
- (4) based on facts and knowledge the company knew or reasonably should have known at the time the expenditures were made.

The Commission also found that questions relating to a utility's interaction with the Illinois Environmental Protection Agency ("IEPA") are relevant considerations in the prudence review process. The September 30, 1992 Order provides further that utilities'

actions relating to their pursuit of recovery from insurers and potentially responsible parties ("PRPs"), and the costs and results thereof, are proper subjects of attention in future proceedings.

The Commission's Order was appealed by various parties. In an opinion issued on April 20, 1995, the Illinois Supreme Court held that "the decision of the Commission to require utilities to share the statutorily imposed costs of coal-tar remediation was 'not supported by substantial evidence based on the entire record of evidence,'" reversed the judgment of the Appellate Court regarding the "sharing portion of the order," and remanded "that portion of the order to the Commission to enter an order consistent with [its] opinion." *Citizens Utility Board v. Commerce Commission*, 166 Ill.2d 111, 651 N.E.2d 1089, 209 Ill. Dec. 641 (1995). The Supreme Court rejected all other challenges to the Commission's Order of September 30, 1992.

On November 21, 1995, the Commission entered an Order on Remand. In that order the Commission found that carrying charges on prudently incurred remediation costs should accrue from the date of the Supreme Court's opinion to the extent that such costs are otherwise eligible for recovery under the Order of September 30, 1992 and are accrued but unrecovered on and after April 20, 1995. The Commission stated that the utility's after-tax cost of capital was the appropriate carrying charge rate for remediation costs. In other respects, it affirmed and adopted the determinations made in the September 30, 1992 Order relating to riders and other recovery methods.

III. UE's COAL TAR RIDERS

UE provides electric service to approximately 63,000 customers in and around the cities of Alton and East St. Louis, Illinois and natural gas service to approximately 18,000 customers in the Alton area. The Coal Tar Riders are designed to recover coal tar cleanup costs and provide:

EAC Costs are all costs paid or payable to parties other than Company employees (including legal fees) which are associated with Environmental Remediation Activities. EAC Costs shall also include Allowable Carrying Charges associated with the deferral of EAC Costs. EAC Costs will be credited to reflect proceeds received from insurance carriers or other entities which represent reimbursement of costs associated with Environmental Remediation Activities. EAC Costs shall not include the salaries of Company employees, or any benefits related thereto. EAC Costs for an Annual Recovery Period also shall not include costs accrued under Statement of Financial Accounting Standards No. 5 ("SFAS No. 5") for which no cash expenditure is forecasted during the Annual Recovery Period. Such SFAS No. 5 costs shall be recoverable as EAC costs in the Annual Recovery Period during which cash expenditures are forecasted. Prior to the time that costs accrued under the SFAS No. 5 are recovered under the GEAC, such costs may be deferred in Account 186.

With respect to environmental remediation activities, the Coal Tar Riders provide as follows:

Environmental Remediation Activities shall include: (i) direct or indirect activities associated with the investigation, clean-up, sampling, monitoring, testing, removal, and/or disposal of material, residues, wastes or substances related to manufactured gas site operations, the dismantling of facilities used in connection with manufactured gas site operations and/or other activity which generated substances subject to Federal, State or local environmental laws or regulations at sites where manufactured gas operations were at any time conducted; and (ii) litigation or other legal activities related to the activities hereinabove listed, including, but not limited to, litigation or legal activities associated with efforts to recover costs associated with any such activities from insurers or other responsible parties.

The only amounts that are recoverable through the Coal Tar Riders are those which are paid for services from outside vendors. Expenses for work provided by UE personnel are not recoverable through the Coal Tar Riders. Under the Coal Tar Riders, costs are allocated to both electric and gas customers, including transportation customers.

IV. PARTIES' POSITIONS

The record contains a detailed description of UE's practices and procedures for reconciling the revenues collected under its Coal Tar Riders with the actual costs recoverable during the reconciliation period. UE has identified one MGP site for which it has incurred, and will continue to incur, environmental cleanup costs as a PRP under state and federal law. This site is located at Alton.

UE witness Mans testified as to his responsibility for supervising the calculation and filing with the Commission the annual reconciliation reports required under UE's Coal Tar Riders. Mr. Mans sponsored UE's Electric and Gas Environmental Adjustment Clause Annual Report for 2002, which was marked as Schedule A to UE Exhibit 1. The report showed that during 2002 UE incurred environmental costs with respect to its Illinois MGP site in the amount of \$1,871. UE later agreed with Staff's recommendation to increase the amount of incremental costs that are recoverable to \$3,357. The increase of \$1,486 reflects the costs incurred by UE in paying a consultant for services rendered with respect to the Alton site. Mr. Mans also testified that during 2002 UE collected revenues of \$36,992 under its Coal Tar Riders.

UE witness Richardson testified that UE incurred costs during 2002 as part of its effort to supply the site owner with a summary of site activities. He added that remediation work at the site is currently planned for 2004 and noted that site access negotiations with the site owner have resulted in some delay. Mr. Richardson further described the methodology by which UE performs environmental work and stated that

all work is performed in consultation with the IEPA and in accordance with the Tiered Approach to Corrective Action Objectives.

Staff witness Pugh issued several data requests concerning the revenues collected and costs recoverable under the Coal Tar Riders. After reviewing UE's filings and responses to data requests, Ms. Pugh found no evidence that the costs incurred by UE failed to comply with prudence standards. Taking into consideration the adjustment recommended by Staff, Staff and UE agree that during 2002, UE experienced an over-recovery in the amount of \$33,635. In light of an over-recovery of \$1,216 at the end of the prior reconciliation period, however, Staff and UE agree further that the cumulative reconciliation for 2002 should reflect an over-recovery of \$34,851.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) UE is a public utility within the meaning of the Public Utilities Act, 220 ILCS 5/1-101 et seq.;
- (2) the Commission has jurisdiction over UE and of the subject matter of this proceeding;
- (3) the statements of facts set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) the evidence shows that during the 2002 reconciliation period, UE acted reasonably and prudently in incurring environmental remediation costs of \$3,357 in connection with the Alton MGP site;
- (5) the evidence shows that during the 2002 reconciliation period, UE acted reasonably and prudently in collecting revenues through its Coal Tar Riders in the amount of \$36,992;
- (6) during 2002, UE experienced an over-recovery in the amount of \$33,635;
- (7) in light of an over-recovery of \$1,216 at the end of the prior reconciliation period, UE's cumulative reconciliation for the 2002 reconciliation period should reflect an over-recovery of \$34,851;
- (8) the cumulative over-recovery of \$34,851 should be used to offset future costs that UE anticipates incurring in relation to remediation activities at the Alton MGP site; UE should adjust its billing factors appropriately; and

- (9) all motions, petitions, objections, or other matters in this proceeding which remain undisposed of should be disposed of consistent with the conclusion herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the reconciliation of revenues collected by Union Electric Company d/b/a AmerenUE under its Rider R, Electric Environmental Adjustment Clause, and Rider E, Gas Environmental Adjustment Clause, with costs prudently incurred for environmental activities for calendar year 2002 is hereby approved as reflected in the prefatory portion of this Order and in the attached Appendix.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 17th day of March, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman